



4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900]

Ewiiapaayp Band of Kumeyaay Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Control Ordinance of the Ewiiapaayp Band of Kumeyaay Indians. The Liquor Control Ordinance regulates and controls the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of California.

DATES: This ordinance shall take effect [Insert date 30 days after publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Room W-2820, Sacramento, California 95825, Telephone: (916) 978-6000, Fax: (916) 978-6099

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the *Federal Register* notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. The Ewiiapaayp Band of Kumeyaay Indians duly adopted Title 513, Ewiiapaayp Band of Kumeyaay Indians Liquor Control Ordinance on May 9, 2018.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Ewiiapaayp Band of Kumeyaay Indians, California, duly adopted Title 513, Ewiiapaayp Band of Kumeyaay Indians Liquor Control Ordinance, on May 9, 2018.

Dated: November 9, 2018.

Tara Sweeney,
Assistant Secretary–Indian Affairs.

The Ewiiapaayp Band of Kumeyaay Indian's Title 513, Ewiiapaayp Band of Kumeyaay Indians Liquor Control Ordinance shall read as follows:

TITLE 513

EWIIAAPAAYP BAND OF KUMEYAAY INDIANS LIQUOR CONTROL ORDINANCE

CHAPTER ONE GENERAL PROVISIONS

ARTICLE 1. AUTHORITY

513.01.1 This Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 586, 18 U.S.C. 1161) and by powers vested in the General Council of the Ewiiapaayp Band of Kumeyaay Indians ("General Council") to develop, adopt and enforce ordinances as authorized under Article VI, Section 1 of the Constitution of the Ewiiapaayp Band of Kumeyaay Indians approved on December 19, 1973 and amended on September 6, 2002.

ARTICLE 2. PURPOSE

513.01.2 The purpose of this Ordinance is to regulate and control the possession, sale, manufacture, distribution and taxation of liquor within Tribal Trust Lands, in order to permit alcohol sales by tribally owned and operated enterprises and private lessees, and at tribally approved special events. Enactment of a liquor control ordinance will help provide a source of revenue to fund the continued operation of the tribal government, the delivery of governmental services, the economic viability of tribal enterprises, and to fund health, safety and general welfare programs and services provided to Tribal citizens and residents of and visitors to land within the Tribe's territorial jurisdiction.

ARTICLE 3. SHORT TITLE

513.01.3 This Ordinance shall be known and cited as the "Liquor Control Ordinance."

ARTICLE 4. JURISDICTION

513.01.4 This Ordinance shall apply to all Tribal Trust Lands now or in the future under the governmental authority of the Tribe.

ARTICLE 5. APPLICATION OF 18 U.S.C. 1161

513.01.5 (a) By adopting this Ordinance, the Tribe hereby regulates the sale, manufacturing, distribution, and consumption of liquor while ensuring that such activity conforms with all applicable laws of the State of California as required by 18 U.S.C. § 1161 and the United States.

(b) (1) This Ordinance shall apply to the full extent of the sovereign jurisdiction of the Tribe.

(2) Compliance with this Subchapter is hereby made a condition of the use of any land or premises within the Tribe's Tribal Trust Lands.

(3) Any individual, person or entity who resides, conducts business, engages in a business transaction, receives benefits from the Tribe, acts under tribal authority, or enters the Tribe's Tribal Lands shall be deemed to have consented to the following:

(i) To be bound by the terms of this Ordinance;

(ii) To the exercise of the jurisdiction of the Tribe's Tribal Court for legal actions arising pursuant to this Ordinance; and

(iii) To service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Ordinance.

(4) No portion of this Ordinance shall be construed as contrary to Federal law.

ARTICLE 6. DECLARATION OF PUBLIC POLICY; FINDINGS

513.01.6 The General Council enacts this Ordinance, based upon the following findings:

(a) The distribution, possession, consumption and sale of liquor on Tribal Trust Lands is a matter of special concern to the Tribe.

(b) The Tribe is the beneficial owner of Tribal Trust Lands, upon which the Tribe plans to construct and operate a gaming facility and related entertainment and lodging facilities.

(c) The Tribe's gaming facility will serve as an integral and indispensable part of the Tribe's economy, providing revenue to the Tribe's government and employment to tribal citizens and others in the local community.

(d) Federal law, as codified at 18 U.S.C. 1154 and 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with State law and the duly enacted law of the Tribe.

(e) The Tribe recognizes the need for strict control and regulation of liquor transactions on Tribal Trust Lands because of potential problems associated with the unregulated or inadequate regulated sale, possession, distribution, and consumption of liquor.

(f) Regulating the possession, sale, distribution and manufacture of liquor within Tribal Trust Lands is also consistent with the Tribe's interest in ensuring the peace, safety, health, and general welfare of the Tribe and its citizens.

(g) Tribal control and regulation of liquor on Tribal Trust Lands is consistent with the Tribe's custom and tradition of controlling the possession and consumption of liquor on Tribal Trust Lands and at tribal events.

(h) The purchase, distribution, and sale of liquor on Tribal Trust Lands shall take place only at duly licensed (i) tribally owned enterprises, (ii) other enterprises operating pursuant to a lease or license with the Tribe, and (iii) tribally-sanctioned events.

(i) The sale or other commercial manufacture or distribution of liquor on Tribal Trust Lands, other than sales, manufacture, and distributions made in strict compliance with this Ordinance, is detrimental to the health, safety, and general welfare of the citizens of the Tribe, and is prohibited.

CHAPTER TWO DEFINITIONS

ARTICLE 1. DEFINITIONS

513.02.1 All definitions of the Tribe's Tribal Code Title 001 "Tribal Code Definitions" apply herein unless the terms are otherwise defined in this Ordinance. For purposes of this Ordinance, whenever any of the following words, terms or definitions is used herein, they shall have the meaning ascribed to them in this Subchapter:

As used in this Ordinance, the terms below are defined as follows:

(a) *Alcohol* means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, in any form, and regardless of source or the process used for its production.

(b) *Alcoholic beverage* means all alcohol, spirits, liquor, wine, beer and any liquid or solid containing alcohol, spirits, liquor, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and that is fit for human consumption, either alone or when diluted, mixed, or combined with any other substance(s).

(c) *Compact* means the Tribal-State compact between the State and the Tribe that governs the conduct of class III gaming activities on that portion of the Tribal Trust Lands recognized as “Indian lands” pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2701, et seq.

(d) *Indian Country*, consistent with the meaning given in 18 U.S.C. § 1151 means: (a) all land within the limits of the Ewiiapaayp Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation; and (b) all Indian allotments or other lands held in trust for the Tribe or a member of the Tribe, including rights of way running through the same.

(e) *License* means, unless otherwise stated, a license issued by the Tribe in accordance with this Ordinance.

(f) *Liquor* means the four varieties of liquor (alcohol, spirits, wine, and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and as such term.

(g) *Malt beverage or malt liquor* means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For purposes this Subchapter, any such beverage containing more than eight percent of alcohol by weight shall be referred to as “strong beer.”

(h) *Manufacturer* means a person engaged in the preparation and manufacturing of liquor for sale, in any form whatsoever.

(i) *Person* means any individual or entity, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, corporation, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group. The term shall also include the businesses of the Tribe.

(j) *Sale and sell* means the transfer for consideration of any kind, including by exchange or barter.

(k) *State* means the State of California.

(l) *Territory* means the term defined in the Tribe’s Tribal Code of Title 001 § 001.02.66. and Title 100 § 100.01.1.D. wherein "Territory" is defined by Article II – Territory of the Tribe’s Constitution, as amended, such that the territorial jurisdiction of the Tribe, is defined as all land within the exterior boundaries of the Ewiiapaayp Indian Reservation, all land within the limits of dependent Ewiiapaayp Indian communities, all

Ewiiapaayp Indian allotments, all land owned in fee by the Tribe, and all other land held in trust for, owned in fee by, or leased by the United States to the Tribe.”

(m) *Tribal retailer* means a liquor retailer wholly owned by the Ewiiapaayp Band of Kumeyaay Indians and located on its Tribal Trust Lands.

(n) *Tribally-licensed retailer* means a person who has a business license from the Tribe to sell liquor at retail from a business located in Indian Country.

(o) *Tribe* means the term defined in the Tribe’s Tribal Code of Title 001 § 001.01.1.51. wherein, Tribe means the “Ewiiapaayp Band of Kumeyaay Indians, formerly known as the Cuyapaipe Band of Mission Indians or the Cuyapaipe Community of the Diegueno Mission Indians of the Cuyapaipe Reservation, California, a federally recognized Indian Tribe organized under § 16 of the Indian Reorganization Act, 25 U.S.C. §476, et seq., (48 Stat. 984) its enterprises, subdivisions, and departments, and its agents acting within the scope of their authority.”

CHAPTER THREE LIQUOR SALES, POSSESSION, & MANUFACTURE

ARTICLE 1. POSSESSION OF ALCOHOL

513.03.1 The introduction and possession of alcoholic beverages shall be lawful within Tribal Trust Lands; provided that such introduction or possession is in conformity with the laws of the State.

ARTICLE 2. RETAIL SALES OF ALCOHOL

513.03.2 The sale of alcoholic beverages shall be lawful within Tribal Trust Lands; provided that such sales are in conformity with the laws of the State and are made pursuant to a license issued by the Tribe.

ARTICLE 3. MANUFACTURE OF ALCOHOL

513.03.3 The manufacture of beer and wine shall be lawful within Tribal Trust Lands, provided that such manufacture is in conformity with the laws of the State and pursuant to a license issued by the Tribe.

ARTICLE 4. AGE LIMITS

500.03.4 The legal age for possession or consumption of alcohol within Tribal Trust Lands shall be the same as that of the State, which is currently 21 years. No person under the age of 21 years shall purchase, possess or consume any alcoholic beverage. If there is any conflict between State law and the terms of the Compact regarding the age limits for alcohol possession or consumption, the age limits in the Compact shall govern for purposes of this Ordinance.

CHAPTER FOUR LICENSING

ARTICLE 1. LICENSING

513.04.1 The Tribe's General Council shall have the power to establish procedures and standards for tribal licensing of liquor sales within Tribal Trust Lands, including the setting of a license fee schedule, and shall have the power to publish and enforce such standards; provided that no tribal license shall issue except upon showing of satisfactory proof that the applicant is duly licensed by the State. The fact that an applicant for a tribal license possesses a license issued by the State shall not provide the applicant with an entitlement to a tribal license. The General Council may in its discretion set standards which are more, but in no case less, stringent than those of the State.

CHAPTER FIVE ENFORCEMENT

ARTICLE 1. ENFORCEMENT

513.05.1 The General Council shall have the power to develop, enact, promulgate, and enforce regulations as necessary for the enforcement of this Ordinance and to protect the public health, welfare, and safety of the Tribe, provided that all such regulations shall conform to and not be in conflict with any applicable tribal, Federal, or State law. Regulations enacted pursuant to this Ordinance may include provisions for suspension or revocation of tribal liquor licenses, reasonable search and seizure provisions, and civil penalties for violations of this Ordinance to the full extent permitted by Federal law and consistent with due process.

Tribal law enforcement personnel and security personnel duly authorized by the General Council shall have the authority to enforce this Ordinance by confiscating any liquor sold, possessed, distributed, manufactured, or introduced within Tribal Trust Lands in violation of this Ordinance or of any regulations duly adopted pursuant to this Ordinance.

The General Council shall have the exclusive jurisdiction to hold hearings on violations of this Ordinance and any procedures or regulations adopted pursuant to this Ordinance; to promulgate appropriate procedures governing such hearings; to determine and enforce penalties or damages for violations of this Ordinance; and to delegate to a subordinate hearing officer or panel the authority to take any or all of the foregoing actions on its behalf.

CHAPTER SIX TAXES

ARTICLE 1. TAXATION

513.06.1 The Tribe expressly reserves its inherent sovereign right to regulate the use and sale of liquor through the imposition of tribal taxes thereon. The General Council hereby authorizes and expressly reserves its authority to impose a tribal Liquor Tax on sales of all alcoholic beverages, including packaged and retail sales of liquor, wine, and beer, at a rate determined to be fair and equitable by the General Council through independent action. The Tribe retains the right to impose such taxes by appropriate ordinance to the full extent permitted by Federal law.

CHAPTER SEVEN ADMINISTRATION

ARTICLE 1. License Required of Tribal Retailers and Tribally-licensed Retailers

513.07.1 Every person engaging in the business of selling, manufacturing, or distributing liquor within the Tribe's Tribal Trust Lands, including but not limited to a brewery, shall secure a business license from the Tribe in the manner provided for by Title 513 ("Business License Standards Code") and otherwise comply with all provisions of Title 513.

ARTICLE 2. Prohibitions

513.07.2 (a) The manufacture, purchase, sale, and dealing in liquor within Tribe's Tribal Trust Lands by any person, party, firm, or corporation except pursuant to the control, licensing, and regulation of the General Council, is hereby declared unlawful. Without limitation as to any other penalties and fines that may apply, any violation of this subsection is an infraction punishable by a fine of up to five hundred dollars (\$500.00).

(b) Every person engaging in the business of manufacturing, distributing or selling liquor within the Tribe's Tribal Trust Lands shall comply with the applicable provisions of the Tribe's Law and Order Code.

ARTICLE 3. Nondiscrimination

513.07.3 No provision of this Ordinance shall be construed as imposing a regulation or tax that discriminates on the basis of whether a retail liquor establishment is owned, managed or operated by a member of the Tribe.

CHAPTER EIGHT MISCELLANEOUS PROVISIONS

ARTICLE 1. SOVEREIGN IMMUNITY PRESERVED

513.08.1 Nothing contained in this Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its agencies, agents or officials from unconsented suit or action of any kind.

ARTICLE 2. CONFORMANCE WITH APPLICABLE LAWS

513.08.2 All acts and transactions under this Ordinance shall be in conformity with the Compact and laws of the State to the extent required by 18 U.S.C. §1161 and with all Federal laws regarding alcohol in Indian Country.

ARTICLE 3. EFFECTIVE DATE

513.08.3 This Ordinance shall be effective as of the date on which the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

ARTICLE 4. REPEAL OF PRIOR ACTS

513.08.4 All prior enactments of the Tribal Council, including tribal resolutions, policies, regulations, or ordinances pertaining to the subject matter set forth in this Ordinance are hereby rescinded.

ARTICLE 5. AMENDMENTS

513.08.5 This Ordinance may only be amended pursuant to an amendment duly enacted by the General Council and certification by the Secretary of the Interior and publication in the **Federal Register**, if required.

ARTICLE 6. SEVERABILITY AND SAVINGS CLAUSE

513.08.6 If any part or provision of this Ordinance is held invalid, void, or unenforceable by a court of competent jurisdiction, such adjudication shall not be held to render such provisions inapplicable to other persons or circumstances. Further, the remainder of the Ordinance shall not be affected and shall continue to remain in full force and effect.

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